

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DAVID D. HENWOOD,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	3:01CV996(AWT) (DFM)
UNISOURCE WORLDWIDE, INC.)	
)	
and)	
)	
GEORGIA-PACIFIC CORPORATION,)	
)	
Defendants.)	June 1, 2004

SUPPLEMENTAL LOCAL RULE 56(a)1 STATEMENT

On November 17, 2003, Defendants Unisource Worldwide, Inc. (“Unisource”) and Georgia-Pacific Corporation (“Georgia-Pacific”) (collectively “Defendants”) filed their Local Rule 56(a)1 Statement along with their Motion for Summary Judgment on Plaintiff’s Amended Complaint. By Order dated March 15, 2004, this Court granted Plaintiff leave to add a claim for promissory estoppel to his Amended Complaint as a “Seventh Count.” Defendants are now moving for summary judgment on Plaintiff’s promissory estoppel claim (the “Seventh Count” of his Amended Complaint). As such, pursuant to Local Rule 56(a)1 of the Local Rules of the United States District Court for the District of Connecticut, Defendants now supplement their initial Local Rule 56(a)1 Statement and respectfully submit the following undisputed material facts.

1. Plaintiff David Henwood (“Henwood”) was a sales representative in the paper business prior to beginning his employment with PCUS. (Henwood Dep. Tr. 31-33.) During the

early 1980's, Henwood worked for A.T. Clayton, a paper merchant, pursuant to a written employment contract. (Henwood Aff. ¶ 4; Henwood 5/18/04 Dep. Tr. 6.¹) This contract set forth the percentage commission Henwood would earn on the gross margin he generated, the benefits he would receive, and also stated that he would "continue to receive full support from the company for the accounts that were [his]" and "that the company would strive to assist [him] in every way possible to enhance and grow the accounts that he brought with him or gained during [his] employment." (Henwood 5/18/04 Dep. Tr. 7.)

2. Eventually, Henwood began to suspect that A.T. Clayton was not paying him his full commissions. (Henwood Aff. ¶ 4). Soon after, Henwood began seeking other employment. (Henwood Aff. ¶ 5). Through a headhunter, Henwood contacted other potential employers, including PCUS, Gould Paper Company, and Clifford Paper Company. (Henwood 5/18/04 Dep. Tr. 9).

3. At that time, in late 1984/early 1985, Robert Fitzgerald was the President of PCUS. (Henwood Aff. ¶ 7).² Henwood did not know Fitzgerald prior to speaking with him about possible employment with PCUS. (Henwood 5/18/04 Dep. Tr. 9). Henwood alleges that Fitzgerald was very interested in having Henwood work for PCUS and bring the Watchtower

¹ Defendants briefly reopened Henwood's deposition on May 18, 2004, for the limited purpose of conducting discovery on his promissory estoppel claim. The transcript of that deposition is cited herein as "Henwood 5/18/04 Dep. Tr. ___" and the cited pages are attached hereto as Exhibit A. All other cites are to exhibits that were attached to Defendants' initial Motion for Summary Judgment, with the exception of the Henwood Affidavit, which he submitted on January 8, 2004 in support of his opposition to summary judgment.

² Fitzgerald retired from PCUS (and Unisource) in the early 1990s, long before Georgia-Pacific acquired Unisource.

account with him. (Id. at 10). Though there was no contract between Watchtower and Henwood, and nothing binding Watchtower to work with Henwood for any length of time, Henwood was “certain” that Watchtower would follow him to PCUS. (Id. at 14-15, 18, 20, 22, 24, 26).

4. According to Henwood, in his pre-employment discussions with PCUS, which occurred almost twenty years ago, Fitzgerald said that (1) he would be “straightforward” with Henwood in “his dealings . . . regarding commission payments”; (2) “he would support [Henwood’s efforts to build a substantial customer base] in every possible way”; and (3) PCUS would not interfere with Henwood’s relationship with the Watchtower account. (Henwood 5/18/04 Dep. Tr. 10-12, 17-18, 26-28). In this latter regard, Henwood asserts that Fitzgerald told Henwood he would handle the Watchtower account as long as he was with PCUS, unless Henwood did “something overt that would have fractured the relationship [with Watchtower].” (Id. at 27-29). Henwood acknowledges that Fitzgerald never made any statement to the effect that Henwood would service the Watchtower account even if Watchtower said it would not work with Henwood, or if Henwood did something to lose Watchtower’s trust. (Id. at 28-29). In fact, Henwood admits this latter situation was not discussed because it is “common sense” that he would not continue working the account if it happened. (Id. at 29).

5. Ultimately, Henwood resigned from employment with A.T. Clayton and sued A.T. Clayton for breach of contract. (Henwood Aff. ¶¶ 4, 5.) Henwood accepted employment as a sales representative with PCUS in February 1985. (Am. Complaint ¶ 13; Henwood Dep. Tr. 11-13, 52 & Exh. 1.) Henwood says he accepted this employment because PCUS “had been in business a very long time and had a very fine reputation and had access to most of the paper

mills in the country.” (Henwood 5/18/04 Dep. Tr. 31-32). When asked in his deposition whether he would have accepted employment with PCUS had Fitzgerald not made the statements Henwood now alleges were made, Henwood readily acknowledged that he had “no way to answer” the question. (Id. at 33). At the time that Henwood accepted employment with PCUS, he did not have a job offer from either Gould Paper or Clifford Paper, and in fact had not directly communicated with either of them. (Id.).

6. Henwood received an offer letter (dated February 13, 1985) signed by Robert Fitzgerald, then President of PCUS. (Henwood Dep. Exh. 1.) This letter provided, in part:

You will be joining us as a commission salesman working out of our New York office with the express purpose of developing new sales for fine printing papers. . . .

. . . .

When you go on actual commission, you will be compensated at 45% of the gross margin generated and from that margin you will pay your own travel, entertainment and telephone expenses.


(Id.) This letter does not say anything about the Watchtower account. (Id.)

7. Henwood brought the Watchtower account with him to PCUS and continued to service the account until the end of 1999. (Am. Complaint ¶ 17.) During his fifteen years of employment with PCUS, Henwood made significant commissions off of the Watchtower account, including over one million dollars per year for the years 1995-1999. (Henwood Dep. Tr. 121-23 & Exh. 9.) As a result, from 1985-1999, Henwood was the highest paid sales representative for PCUS. (Am. Compl. ¶ 22.)

8. Henwood did not have any non-competition agreement with PCUS and acknowledges that he could have taken the Watchtower account with him to another employer if

he decided to leave PCUS. (Henwood 5/18/04 Dep. Tr. 34-35). However, Henwood never sought other employment while he was with PCUS or Unisource. (Id. at 35).

THE DEFENDANTS,
UNISOURCE WORLDWIDE, INC. and
GEORGIA-PACIFIC CORP.

By 

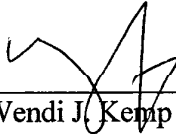
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by overnight mail, postage prepaid,
to the following counsel of record on this 1st day of June, 2004:

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EXHIBIT A



UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

* * * * *

DAVID D. HENWOOD,
PLAINTIFF

CIVIL ACTION NO. 3:01CV996

VS.

MAY 18, 2004

UNISOURCE WORLDWIDE INC. &
GEORGIA-PACIFIC CORP.,
DEFENDANTS

VOLUME II

* * * * *

CONTINUED DEPOSITION OF DAVID D. HENWOOD

APPEARANCES:

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DEPOSITION OF DAVID D. HENWOOD
MAY 18, 2004

1 Q We'll come back to those. I want to be
2 sure I understand exactly what the nature of your
3 complaint is as far as A.T. Clayton and we spent
4 time initially in your deposition talking about your
5 experience, your lawsuit against A.T. Clayton.

6 Did you work anywhere else in between
7 A.T. Clayton and PCUS?

8 A No.

9 Q My recollection is that you had an actual
10 written contract with A.T. Clayton?

11 A Yes.

12 Q The claim was they had breeched that
13 contract?

14 A Yes.

15 Q Do you recall what the contract provided
16 for, generally, in terms? Was it only compensation
17 terms or did it also include other things?

18 A It included a variety of promises.

19 Q Do you remember -- obviously we haven't
20 seen the contract but do you remember what other
21 promises it included?

22 MR. YOUNG: I just object to the
23 form. I'm not sure we've established it was a
24 breech of contract; when you said have you seen it.

DEPOSITION OF DAVID D. HENWOOD
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1 MR. SULLIVAN: I believe Mr. Henwood
2 said it was a written contract.

3 Q But was it a written contract?

4 A Yes.

5 Q I know it's hard to remember. That was,
6 whatever, 20 years ago but do you recall what terms
7 the contract generally provided?

8 I assume there were compensation
9 terms?

10 A It was, essentially, the same conditions
11 that existed with the contract I had with PCUS.

12 Q What were those conditions?

13 A That I would earn a percentage of the
14 gross margin, that I would receive the normal
15 benefits that an employee has such as retirement
16 benefits, pension benefits, health benefits, et
17 cetera.

18 That I would continue to receive full
19 support from the company for the accounts that were
20 mine, or accounts that I brought to the company.

21 That the company would strive to
22 assist me in every way possible to enhance and grow
23 the accounts that I brought with me or gained during
24 my employment.

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1 A Yes.

2 Q Did you know Mr. Fitzgerald prior to
3 communicating with him about employment
4 possibilities?

5 A No.

6 Q How did that come about? How did your
7 interaction with him come about, talking about
8 employment?

9 A I believe I testified to this before but
10 it came as a result of a contact made by a
11 headhunter.

12 Q Who else were you talking with, other
13 employers at that time, other than PCUS?

14 A It was through him.

15 Q Through the headhunter?

16 A Yes.

17 Q Do you recall who those were?

18 A Well, I know I testified to this before.
19 I'd have to go back and look at the deposition.

20 One that comes to mind was Gould
21 Paper Company and Clifford Paper Company.

22 Q Do you know where Gould paper is
23 headquartered?

24 A I believe its New York City.

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1 Q And what about Clifford?

2 A I believe they are headquartered in New
3 Jersey.

4 Q Take me through -- I don't think we got
5 into this level of detail earlier in your deposition
6 but how many discussions, if you remember, did you
7 have with Mr. Fitzgerald before you began employment
8 with PCUS?

9 A I don't recall.

10 Q Was it just one?

11 A No, it was more than one.

12 Q To the best that you could remember,
13 because you're basing your claim on statements that
14 he made to you, tell me what discussions there were;
15 I mean what he said, what you said, to the best you
16 can recall, about your employment with PCUS?

17 A He indicated that he was knowledgeable
18 about the owner of A.T. Clayton and that he was very
19 much aware of the job that I had done for them.

20 He was very anxious to acquire this
21 account.

22 Q Referring to Watchtower?

23 A Yes. And that if I could do that kind of
24 a job with Watchtower, then the likelihood would be

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1 that I could do it with others.

2 That he was a president within a
3 public corporation and he would run a risk of losing
4 his own job if he were to try and somehow
5 shortchange a salesman on his commissions.

6 That they had people above him in the
7 management team that were lifetime members of the
8 paper industry, well known to the paper mills and to
9 many, many large and small customers.

10 That they had a strong team in terms
11 of being able to manage things like accounts
12 receivable and back-up personnel available for
13 inside sales purposes, which is important.

14 He was very clear to assure me that
15 he would never give me cause for concern in terms of
16 being straightforward in his dealings with me
17 regarding commission payments.

18 That he was willing to pay me a
19 salary for the time it took to reestablish the
20 account with PCUS.

21 That he personally could guarantee
22 that any management personnel from the parent
23 corporation, that were appropriate in a given
24 circumstance, he could make available to me.

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1 In other words, he was endeavoring to
2 show me that he and the company that he was the
3 president of were certainly as capable and hopefully
4 more capable than anybody else I could talk to in
5 furthering my efforts to build a substantial
6 customer base and that he would support that in
7 every way possible.

8 Q To touch on a couple of things you just
9 said, when you said that he stated that because he
10 was president of a corporation he could risk losing
11 his job if he shortchanged a sales rep on
12 commissions, what was the context for that coming
13 up, if you remember?

14 A Only that A.T. Clayton is a private
15 company.

16 Q But the context of him making that sort of
17 statement, do you remember what you all were talking
18 about when that came up?

19 Let me rephrase that.

20 Was that in the context of you
21 telling him about the lawsuit?

22 A There was no lawsuit then.

23 Q The lawsuit you had prior with A.T.
24 Clayton?

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1 shortchanged you on commissions?

2 A Yes.

3 Q Why did you tell him about your
4 perceptions of being shortchanged, by putting words
5 in your mouth, being shortchanged by A.T. Clayton?

6 A Because we were down to the point of his
7 wanting to know why I would want to leave A.T.
8 Clayton; what were the things that were in my mind,
9 that I was actively pursuing other opportunities in
10 the industry.

11 Q At the time that you were talking to Mr.
12 Fitzgerald, about going to work for PCUS, I take it
13 you knew that because of your relationship with the
14 Watchtower that you could bring that account to PCUS
15 from A.T. Clayton?

16 A I haven't got a way to answer that
17 question.

18 Q You didn't know whether or not Watchtower
19 would follow you to PCUS?

20 Let me ask it this way.

21 At that point in time, when you were
22 talking with Mr. Fitzgerald about employment for
23 PCUS, what was your thought as to whether or not you
24 would be able to bring the Watchtower account with

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1 you from A.T. Clayton?

2 A I felt certain I could do it.

3 Q Why was that?

4 A Because the supplier at that point was
5 failing in their ability to produce a suitable
6 product.

7 Q When you talk about supplier you're not
8 talking about A.T. Clayton, you're talking about the
9 paper mill?

10 A Yes, our supplier.

11 Q Just out of curiosity, who was that at
12 that point?

13 A Georgia-Pacific.

14 Q This statement that you're saying -- well,
15 was there anything else that you remember about your
16 discussions with Mr. Fitzgerald concerning your
17 employment, any other statements that he made to you
18 other than what you've already talked about?

19 A He volunteered that, for instance, if we
20 had occasion to -- and this didn't pertain exactly -
21 - you're asking just in reference to Watchtower?

22 Q Well, generally. I mean certainly
23 including Watchtower but generally statements that
24 he made to you about your employment?

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1 potential suppliers.

2 Ask the question again? I'm missing-

3 -

4 Q I was trying to get a sense, based on your
5 statement about Dan Romanaux that you tried to keep
6 him out of the day to day works, was trying to get a
7 sense of Mr. Fitzgerald's involvement with you in
8 working with the Watchtower account during the time
9 that he was president, whether he was actively
10 involved or --

11 A He was actively involved.

12 Q You said you had conversations with him
13 regularly about the account and about the supplier
14 situation?

15 A That's correct.

16 Q Let me go back to one of the things you
17 said as far as comments he made to you before your
18 employment.

19 When he stated that he would support
20 you and the company would support you, did he
21 elaborate on what that meant specifically or was
22 that in the context of all those other things that
23 you said?

24 I guess what I'm asking is the word

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1 support. Did he specifically talk about what that
2 meant?

3 A Well, I think I've already testified to
4 that.

5 He was very clear and unequivocal in
6 his promises to me, that we wouldn't be dealing with
7 a sort of negative situation.

8 We would be dealing with a very
9 positive situation. That it would be -- he would be
10 actively assisting me in every way he possibly
11 could, to generate the business.

12 Q Earlier in your deposition you had
13 indicated that at no point during your employment
14 with PCUS was there a contract between Watchtower
15 and either you specifically or PCUS?

16 A That's right.

17 MR. YOUNG: Objection to the form. I
18 think the testimony was that the purchase orders
19 were contracts.

20 Q But there was no contract, requiring
21 Watchtower to continue purchasing paper through
22 PCUS?

23 A There was no written contract beyond the
24 purchase orders.

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1 A It was the result of a variety of
2 discussions, yes.

3 Q But again that didn't prevent them from
4 taking their business elsewhere, correct?

5 A No. Well, I'm not -- it would prevent
6 them in the sense of the level of -- the strength of
7 the commitment they would have made verbally.

8 Q I'm not sure I'm following you. What do
9 you mean?

10 A Well, that they wouldn't act
11 precipitously, my feeling was, and I think it
12 appears to me we were acting in good faith.

13 Q But nothing required them to purchase
14 paper from PCUS for a two-year period, as an
15 example?

16 A No.

17 Q I don't think I ever asked you this. Did
18 you feel like when Watchtower ultimately took its
19 business from Fraser, they had violated some sort of
20 agreement with you?

21 MR. YOUNG: I'll object because I
22 think this line of questioning is not part of the
23 promissory estoppel claim.

24 MR. SULLIVAN: I think it is. You're

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1 Q How can you answer? I mean what's
2 difficult about that question?

3 A The difficulty is in that there were
4 several parties involved and the form is not -- it's
5 not in a form that I can answer.

6 Q It's not a complicated question, Mr.
7 Henwood.

8 You testified and Mr. Rittenbach has
9 testified that Watchtower for a long period of time
10 thought about going direct with Fraser Papers.

11 MR. YOUNG: Objection to form. I
12 don't think he testified to that.

13 MR. SULLIVAN: Mr. Henwood did not?

14 Q Well, I'm not trying to put words in your
15 mouth but there's evidence, at least from Mr.
16 Rittenbach, there was a thought process of going
17 direct for Fraser Papers for a number of years.

18 All I'm asking is, if you know, when
19 Watchtower did that. Forget about the other
20 parties.

21 Aside from Watchtower and PCUS, did
22 you believe that Watchtower was doing something that
23 violated some sort of an agreement with PCUS?

24 A No.

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1 I was just asking about Watchtower,
2 if they at any point in time -- forget about the
3 circumstances that you're alleging here.

4 BY MR. SULLIVAN:

5 Q I think you already answered the question
6 now but if the Watchtower at any point in time
7 elected to buy from somebody else, they weren't
8 violating any agreement with PCUS if they did that,
9 were they?

10 A No.

11 I would like to interrupt for a
12 second and just go back to the earlier part of the
13 testimony on the discussions with Fitzgerald.

14 Several points, one of which was the
15 commission rate, 45 percent, that was clearly a
16 promise that he had made verbally and in writing.

17 We had a lot of discussions regarding
18 the nature of the Watchtower, the Jehovah's
19 Witnesses and how they operated.

20 The length of time that I had done
21 business with them made me privy to the intricacies
22 of their way of doing business.

23 A good for instance was the fact that
24 they had no formal hierarchy. Everybody was really

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1 earlier, that you were certain that the Watchtower
2 would come over as an account to PCUS but you didn't
3 know that for a fact.

4 I take it there was no commitment by
5 the Watchtower to come over with you to PCUS?

6 A No.

7 Q You couldn't rely, based on what we've
8 just been talking about, you couldn't rely on
9 servicing the Watchtower account for any particular
10 length of time because the Watchtower could take
11 their business elsewhere, correct?

12 MR. YOUNG: Objection. You can
13 answer.

14 A Would you ask it again, please?

15 Q Sure. You couldn't rely on servicing the
16 Watchtower account for any specific period of time
17 because the Watchtower could take their business
18 elsewhere, correct?

19 A I could rely on -- no.

20 Q Mr. Fitzgerald never said to you that you
21 would always service the Watchtower account for
22 PCUS, right?

23 A Oh, he absolutely did as long as it was an
24 account of PCUS.

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1 Q He specifically said those words?

2 A I believe so, to the best of my
3 recollection.

4 Q When did he say that?

5 A It was early in the discussions I had with
6 him, regarding going to work for him.

7 Q What exactly did he say?

8 A Well, that's the best of my recollection.
9 I don't recall exact words but that was the sum and
10 substance of it.

11 Q Tell me what the sum and substance was
12 because I don't want to -- I want to be sure I'm
13 understanding what you're saying.

14 A You can be sure that no one would
15 interfere in any way with your handling and
16 maintaining this account as your account, as long as
17 you're with the company; unless, of course, you had
18 some outside reason -- not outside reason but unless
19 you had done something overt that would have
20 fractured the relationship.

21 Q And he specifically said those words to
22 you or the best you can remember?

23 A Well, he was saying it not only in terms
24 with Watchtower but any account.

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1 The context was the salesman brings
2 in an account, it's his account and no one would
3 interfere with it. We would do everything we could
4 to try and help it grow and help you make it grow.

5 Q And that's true, I mean to the extent you
6 know, that's true for any sales rep who brings an
7 account in or has an account, correct?

8 A Well, I don't know about other people. I
9 know what our conversation was.

10 Q You don't know what Mr. Fitzgerald told
11 other sales reps that he was bringing into PCUS?

12 A No.

13 Q But I take it he never said to you that
14 you would continue servicing the Watchtower account,
15 even if Watchtower came and said we're not going to
16 work with Mr. Henwood?

17 A We never had a discussion about that.

18 Q So he never made that statement?

19 A No.

20 Q You said he made the statement before you
21 began employment or after the statement you were
22 just talking about?

23 A I believe it was before.

24 Q I take it, based on the way you already

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1 answered the question, Mr. Fitzgerald never said to
2 you that you would keep the account if you did
3 something that lost or that caused Watchtower to
4 lose trust in you or faith in you?

5 A It was not a subject we discussed because
6 that's such a common sense issue, I guess. I had no
7 occasion to even think about it, nor discuss it.

8 Q Is there anything else? I'm just trying
9 to be sure we're covering all the bases.

10 Anything else that Mr. Fitzgerald
11 said to you in your discussions about employment
12 with PCUS that you're relying upon in this lawsuit,
13 as part of your promissory estoppel claim?

14 MR. YOUNG: Just to clarify, other
15 than what he's previously testified?

16 MR. SULLIVAN: Other than what he
17 testified to.

18 MR. YOUNG: At other depositions.

19 A I may be missing something that's
20 important but it's not coming to mind at the moment.

21 Q Mr. Henwood, let me put in front of you --
22 we don't need to mark it because it's already an
23 exhibit.

24 This was marked Plaintiff's Exhibit

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1 that you will always have the Watchtower account,
2 specifically?

3 A No.

4 Q Did you ask for -- let's take that point
5 as an example, your servicing of the Watchtower
6 account.

7 Did you ask for something to be in
8 writing saying that you would be the exclusive sales
9 rep for the Watchtower account?

10 A No.

11 Q How come?

12 A It was clearly understood that that was
13 the ground rules.

14 Q Weren't you -- I mean just being in the
15 midst of the A.T. Clayton situation and not knowing
16 Mr. Fitzgerald before, weren't you uncomfortable
17 just taking his statements, you know, without having
18 something in writing?

19 A I wasn't uncomfortable at all.

20 Q You talked about the other employers Gould
21 and Clifford that you were seeking employment from
22 at that point.

23 Why did you think that PCUS was a
24 better fit for you, I guess for lack of a better

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1 term, then either Gould or Clifford?

2 A Well, Paper Corp had been in business a
3 very long time and had a very fine reputation and
4 had access to most of the paper mills in the
5 country, which I needed as an opportunity to --
6 well, that was the principle -- those were the
7 principle things.

8 Q Was PCUS offering you -- the letter refers
9 to the commission you'd be paid.

10 Was PCUS offering you a higher
11 commission then Gould or Clifford?

12 A No.

13 Q Were they the same commission rates?

14 A Approximately.

15 Q Do you recall what Gould was offering you
16 by way of commission rate?

17 A To the best of my recollections they were
18 all essentially the same, when you netted them out.

19 Q To the best of your recollection, when
20 were you talking with individuals from Gould and
21 Clifford in comparison to when you were talking with
22 Mr. Fitzgerald about employment?

23 A The conversations were not directly with
24 them, they were through the headhunter.

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1 Q I take it you didn't have any direct
2 communication with Gould?

3 A No.

4 Q And no direct communication with Clifford?

5 A Right. Yes.

6 Q Did you have a job offer from Gould?

7 A No.

8 Q Did you have a job offer from Clifford?

9 A No.

10 Q I'm just asking at the time you accepted
11 the PCUS employment.

12 MR. YOUNG: Was that the end of the
13 last question?

14 MR. SULLIVAN: Yes. He already said
15 no. I was just clarifying at the time.

16 Q Is your answer still the same? The time
17 I'm asking about is when you accepted employment
18 with PCUS.

19 A Yes.

20 Q If Mr. Fitzgerald had not made all the
21 statements that you talked about Mr. Fitzgerald
22 making to you, if he had not made those statements,
23 would you have accepted employment with PCUS?

24 A I have no way to answer that.

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1 Q In terms of -- and you've already -- I
2 mean you've already talked about your relationship
3 with Watchtower.

4 Fair to say that at the time you
5 started with PCUS you certainly believed that you
6 knew the Watchtower account, more about their
7 service needs than any other sales rep as far as the
8 paper that you were selling them?

9 A I believed that I knew the Watchtower
10 account and their requirements.

11 Q Why were you concerned -- well, were you
12 concerned about another sales rep, internally, PCUS
13 or Unisource being able to take your place with the
14 Watchtower?

15 A No.

16 MR. YOUNG: I'm sorry, the no was
17 because you said why, then you said --

18 MR. SULLIVAN: Changed it to were you
19 concerned about it.

20 MR. YOUNG: Okay.

21 Q I take it, based on what you've already
22 testified to, at any point in time during your
23 employment with PCUS or later Webservice for that
24 matter you could have because the Watchtower

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1 relationship was with you, you could have taken the
2 Watchtower somewhere else if you wanted to change
3 employers?

4 A Yes.

5 Q You didn't have any sort of non-compete
6 agreement I take it with PCUS or with Unisource?

7 A No.

8 Q Did you ever try to take the Watchtower
9 account somewhere else other than PCUS or Unisource?

10 A No. Let me qualify the second to last
11 question.

12 Well, let's let it go at that.

13 Q If you at some point in time -- and this
14 is sort of getting back to the crux of the lawsuit
15 but if you felt like Unisource or Webservice --
16 Unisource collectively to include Webservice and PCUS
17 -- was not supporting you properly with the
18 Watchtower account, why didn't you just change
19 employers and take Watchtower with you?

20 A I didn't have any knowledge of what they
21 were up to.

22 Q Well, at the point in time that you --
23 let's say December of 1999, when you had -- I
24 believe your testimony was you had met with Wayne

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1 Rittenbach, you know, didn't blame you for anything
2 and in fact said that if you could assure him that
3 Mr. Romanaux would not continue on the account, that
4 he would be able to still work with you?

5 A That's correct.

6 Q So how -- I mean at that point what
7 changed in the year 2000, anything?

8 A Well the ongoing circumstance was that we
9 had spent many, many years developing Fraser as the
10 supplier to the paper corporation and that was still
11 a desired route and so that obviously is the line of
12 least resistance and if that could have been
13 rectified, it would have been in my interest and the
14 company's interest and in Watchtower's interest to
15 make that whole again.

16 Q You're talking about Fraser not ultimately
17 going directly with Watchtower?

18 A Correct.

19 Q I think you just said this but fair to say
20 when Unisource ultimately lost Watchtower as a
21 client as well, that Unisource suffered damage also;
22 Unisource lost a big account?

23 A Yes.

24 Q This may be an understatement but I assume

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1 MR. SULLIVAN: I don't have any
2 further questions.

3 MR. YOUNG: I think I may have a few
4 follow-ups, if we can go off the record?

5 (Recess)

6 MR. YOUNG: I just have a few follow-
7 up questions.

8

9 CROSS EXAMINATION

10 BY MR. YOUNG:

11 Q Mr. Henwood, I believe the question Mr.
12 Sullivan asked you was, something along the lines,
13 did your experience at A.T. Clayton make you more
14 suspicious of employers?

15 Do you recall that question?

16 A Yes.

17 Q I believe you answered it no, is that
18 correct?

19 A Yes.

20 Q Were you already suspicious of employers
21 at that time?

22 A Well I was a lot more knowledgeable,
23 having gone through a bit of experience with A.T.
24 Clayton, and then there was the normal course of

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1 associating with other people in the industry; the
2 subject matter came up.

3 So I was -- I knew it was a question
4 that needed to be asked and so I was -- I don't want
5 to say I was weary but I was just informed better.

6 Q Mr. Sullivan asked you the question about
7 the number of conversations you had with Mr.
8 Fitzgerald and I believe you testified it was more
9 than one, is that correct?

10 A Yes.

11 Q Can you give an approximate idea for us of
12 how many it was?

13 A My best recollection is, between personal
14 visits and phones, probably eight or nine.

15 Q That was with Mr. Fitzgerald, pre-
16 employment?

17 A Yes.

18 Q I believe you testified with respect to
19 your ability to bring the Watchtower account to PCUS
20 that one basis for that belief was that the supplier
21 was failing, is that correct?

22 A Yes.

23 Q Other than the fact the supplier was
24 failing, was there anything else that led you to